

AMENDED IN SENATE JUNE 3, 2014

AMENDED IN SENATE MAY 8, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1610

Introduced by Assembly Member Bonta
(Coauthors: Assembly Members Garcia, Gonzalez, Maienschein,
Skinner, Ting, and Waldron)

February 6, 2014

An act to amend ~~Section~~ *Sections 1335 and 1337* of the Penal Code, relating to material witnesses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as amended, Bonta. Material witnesses: human trafficking.

Existing law authorizes the defendant or the people, in cases where the defendant has been charged with a serious felony, as defined, or in a case of domestic violence, to have a witness examined conditionally, as specified, if there is evidence that the life of the witness is in jeopardy. *Existing law specifies the information required to be stated in the affidavit applying to examine a witness conditionally, including the nature of the offense charged.*

This bill would authorize the defendant or the people to apply for an order that the witness be examined conditionally when the defendant has been charged with human trafficking ~~and there is evidence that the life of the witness is in jeopardy or that the witness has been threatened or dissuaded from testifying, or~~ *and there is evidence that the victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical*

threat, from cooperating with the prosecutor or testifying at trial and if the court finds there is a reasonable basis to believe that the witness will not attend the trial. The bill would conform the affidavit requirements for applying to examine a witness conditionally.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1335 of the Penal Code is amended to
2 read:

3 1335. (a) If a defendant has been charged with a public offense
4 triable in a court, he or she in all cases, and the people in cases
5 other than those for which the punishment may be death, may, if
6 the defendant has been fully informed of his or her right to counsel
7 as provided by law, have witnesses examined conditionally in his
8 or her or their behalf, as prescribed in this chapter.

9 (b) If a defendant has been charged with a serious felony or in
10 a case of domestic violence, the people or the defendant may, if
11 the defendant has been fully informed of his or her right to counsel
12 as provided by law, have a witness examined conditionally as
13 prescribed in this chapter, if there is evidence that the life of the
14 witness is in jeopardy.

15 (c) If a defendant has been charged with human trafficking, as
16 prescribed in Section 236.1 *and there is evidence that the victim*
17 *or material witness has been or is being dissuaded by the defendant*
18 *or a person acting on behalf of the defendant, by intimidation or*
19 *physical threat, from cooperating with the prosecutor or testifying*
20 *at trial, the people or the defendant may, if the defendant has been*
21 *fully informed of his or her right to counsel as provided by law,*
22 *have a witness examined conditionally as prescribed in this chapter*
23 *if any of the following apply: the court finds that there is a*
24 *reasonable basis to believe that the witness will not attend the*
25 *trial.*

26 ~~(1) There is evidence that the life of the witness is in jeopardy.~~

27 ~~(2) There is evidence that the witness has been threatened or~~
28 ~~dissuaded from testifying at the trial.~~

29 ~~(3) The court finds that there is a reasonable basis to believe~~
30 ~~that the witness will not attend the trial.~~

(d) If a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter.

(e) For the purposes of this section, the following definitions shall apply:

(1) "Domestic violence" means a public offense arising from acts of domestic violence as defined in Section 13700.

(2) "Serious felony" means a felony listed in subdivision (c) of Section 1192.7 or a violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.

SEC. 2. Section 1337 of the Penal Code is amended to read:

1337. The application shall be made upon affidavit stating all of the following:

(a) The nature of the offense charged.

(b) The state of the proceedings in the action.

(c) The name and residence of the witness, and that his or her testimony is material to the defense or the prosecution of the action.

(d) *That either of the following are true:*

~~(d) That the~~

(1) *The witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 65 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy, or jeopardy. that*

(2) *That the witness is a victim or material witness in a domestic violence case who has been or is being intimidated or threatened, as described in subdivision (d) of Section 1335 from cooperating with the prosecutor or testifying at trial.*

(3) *That there is evidence that the victim or a material witness in a case where the defendant has been charged with human trafficking has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at trial, as described in subdivision (c) of Section 1335.*

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